UN

UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.290
9 May 1997

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Eighteenth session

SUMMARY RECORD OF THE 290th MEETING

Held at the Palais des Nations, Geneva
on Friday, 2 May 1997, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Paraguay (continued)

ORGANIZATIONAL AND OTHER MATTERS (continued)

FUTURE MEETINGS OF THE COMMITTEE (continued)

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-FIRST SESSION:

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.97-16410 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second period report of Paraguay (continued) (CAT/C/29/Add.1; HRI/CORE/1/Add.24)

1. At the invitation of the Chairman, Mr. Giménez Cabral, Mrs. Casati and Mrs. Alcaraz Cañiza (Paraguay) took places at the Committee table.

2. Mr. GIMENEZ CABRAL (Paraguay) said that the new draft Penal Code was currently before the Chamber of Deputies. He had obtained firm assurances that it would be adopted by 15 May 1997.

3. With regard to the inclusion in Paraguayan legislation of a definition of torture based on that contained in the Convention, the draft Penal Code did not normally define offences, but specified the penalties to be imposed. However, the following motives for an act of torture were stated and constituted a type of definition: the use of physical or mental violence against a prisoner or detainee to obtain a confession or evidence or for purposes of intimidation, mortification or humiliation.

4. Articles 590 and 615 of the Code of Criminal Procedure dealt with extradition, which was based on treaties, the written customary law in force in the country requesting extradition or the principle of reciprocity.

5. Legal cooperation was based on reciprocity. When a request was made by a foreign court to a Paraguayan court, the sole requirement was that the relevant records should be clearly identifiable in the "Archivo del Terror" documentation centre.

6. With regard to the rights of suspects, questioning by the police normally took place in the presence of a legal counsel who informed arrested persons of their constitutional rights. Suspects were not forced to give evidence against their will. Statements obtained from suspects during the investigation were considered valid only if they had been made before the competent judge. All complaints of physical and psychological ill-treatment by officials that reached the higher police authorities, the Office of the Attorney-General or the Commission on Human Rights and Indigenous Affairs were investigated.

7. There was no evidence that doctors had participated directly in acts of torture under the previous regime. In most cases, their role had consisted in issuing death certificates that concealed the true cause of death. He had no information about doctors involved in the treatment and rehabilitation of victims of torture in public sector institutions and there was no re-education programme for doctors, as no allegations of torture had been made against a member of the medical profession.

8. Persons of either sex who were under 22 years of age and had completed secondary education were admitted to police academies. They were allowed home

only on weekends and qualified as police officers after three years of study. In addition to a wide range of general subjects, the curriculum covered such disciplines as psychology, medicine, ethics and constitutional, commercial, criminal and other branches of law. In the area of law enforcement, emphasis was placed, inter alia, on the control of drug trafficking and money laundering, the handling of weapons and police psychology. Many young police officers attended courses abroad, particularly in Germany, the United States and the United Kingdom. Young people under the age of 20 were admitted to junior schools for subordinate officers on completing basic education. Both categories of establishment provided instruction in basic human rights principles, the proper conduct of a police officer in the light of those principles and international human rights treaties.

9. The Human Rights Protection Office within the Legal Department of the Ministry of the Interior had much the same duties as the corresponding body in the Ministry of Justice and Labour. In practice, however, its activities were confined to the handling of complaints of human rights violations by police officers. It was headed by a former member of Parliament who was currently serving as Director of Tacumbú prison.

10. The bill referred to in paragraph 59 of the report (CAT/C/29/Add.1) had become Act No. 838, which provided for the compensation of the victims of human rights violations under the dictatorship. The provision for compensation for unlawful detention for a continuous period of over three months had been deleted. The period referred to in the Act was "over one year".

11. Under the Constitution and the Code of Criminal Procedure, an arrested person must be brought before a judge within 24 hours and nobody could be held incommunicado save by order of the competent judge. The maximum period of such detention was three days with the possibility of extension for a further three days where substantiated grounds existed. The defence counsel was not affected by such rulings.

12. Military service was compulsory for males who had reached 17 years of age. It had become a tradition, especially in rural areas, for 14 or 15-year-old boys to sign up for military service and it was not always possible to monitor the age of conscripts. Moreover, medical examinations were not always effective in weeding out the physically unfit and young people had been known to die of heart failure during military exercises. There were isolated cases of ill-treatment of conscripts and the culprits were subject to prosecution by the military courts.

13. According to a report he had obtained from the National Police Headquarters, over 100 police officers had been accused of ill-treating individuals in their charge under the previous regime. To date, about 40 had been dismissed as a result of legal proceedings. He had recently spoken to three prison officers accused of ill-treatment of prisoners. Two had left the service voluntarily and the third had been dismissed. His case was currently before the ordinary courts.

14. Complaints of police ill-treatment could be filed with the Office of the Attorney-General, the Parliamentary Commission on Human Rights, the Bicameral Commission of Investigation, the Human Rights Protection Office of the Ministry of the Interior or the national police authorities themselves.

15. The Prisons Act prohibited the detention of accused and convicted persons in the same location.

16. Although peasants suffered from economic injustice and the unequal distribution of wealth, they were not evicted from their lands, but were removed by court order from private property on which they had been squatting. They were frequently responsible for the deforestation of woodland property or used the land to cultivate narcotics.

17. The guarantees provided by the Constitution included unconstitutionality, which was proclaimed by the Supreme Court, three different types of habeas corpus (preventive, reparative and general) (HRI/CORE/1/Add.24, para. 146) habeas data concerning the right of access to police and other records and the right of amparo (protection).

18. With regard to the rank of treaties, he drew attention to paragraphs 162 and 163 of document HRI/CORE/1/Add.24.

19. There had been no state of emergency since the advent of democracy. The conditions governing states of emergency were set forth in paragraphs 13 to 23 of document CAT/C/29/Add.1.

20. Members of the Supreme Court were appointed from a list of three candidates submitted to the Senate by the Judicature Council. There were nine members altogether. The Judicature Council proposed to the Supreme Court the names of candidates for offices in the lower courts.

21. With regard to irremovability, judges were initially appointed for a five-year term of office. If they remained in office for a further two terms, they acquired security of tenure until the age of 75.

22. The constitutional division of the Supreme Court was responsible for examining and ruling on the constitutionality of laws and regulations and for deciding whether to declare final or interlocutory judgements invalid on grounds of unconstitutionality. The constitutional division could be invoked directly; it was also possible for other courts to refer matters to its jurisdiction.

23. Conscientious objector status on religious grounds was authorized by the Constitution. Conscientious objectors were not physically ill-treated, but they were called effeminate and psychologically ill-treated.

24. The delegation of Paraguay withdrew.

The meeting was suspended at 3.50 p.m. and resumed at 4.20 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

25. Mr. BRUNI (Secretary of the Committee) read out the list of country rapporteurs and alternate rapporteurs for the reports submitted by States parties to the Convention for consideration at the Committee's nineteenth session in November 1997. The country rapporteurs and alternates were, respectively, Mr. González Poblete and Mr. Zupancic (Argentina), Mr. Pikis and Mr. Zupancic (Cuba), Mr. Burns and Mr. Sorensen (Cyprus), Mr. Camara and Mrs. Iliopoulos-Strangas (Portugal), Mr. González Poblete and Mr. Dipanda Mouelle (Spain) and Mr. Dipanda Mouelle and Mrs. Iliopoulos-Strangas (Switzerland). The consideration of the report of Guatemala had also been rescheduled for the November meeting. No country or alternate rapporteurs had been chosen for France, Germany, Guatemala, New Zealand, Norway or Peru.

26. Mrs. ILIOPOULOS-STRANGAS asked whether it was not premature to choose the rapporteurs for reports scheduled for consideration at the May 1998 session of the Committee.

27. Mr. ZUPANCIC said that, if any members of the Committee were up for re-election prior to the May 1998 session, it might be equally premature to take a decision in November 1997.

28. Mr. SORENSEN said that, since the elections would not take place until after the November session, the Committee might as well take a decision on the matter immediately, at least in the case of Guatemala.

29. Mrs. ILIOPOULOS-STRANGAS said that other, more urgent country reports might be submitted in the interim and that members of the Committee might wish to change their assignments.

30. Mr. CAMARA said that the Committee already knew which of its members had mandates extending into 1998. Personally, he preferred to know which reports he was responsible for as far in advance as possible.

31. Mr. BURNS said that he was not allowed to serve as rapporteur for New Zealand, but volunteered to do so for the reports of Germany and Norway.

32. Mr. SORENSEN said that he volunteered to serve as rapporteur for the reports of Norway, Germany and Guatemala.

33. Mr. GONZÁLEZ POBLETE said that he was willing to work with Mr. Sorensen on the report of Guatemala. He was, however, already scheduled to introduce the reports of Argentina and Spain at the November session and hoped that he would not be required to introduce two country reports as closely together as he had done at the current session in the case of Mexico and Paraguay.

34. Mr. PIKIS said it was wrong for Committee members to allow its members to volunteer to serve as rapporteurs for country reports. The Committee's work should be distributed at random on a strictly equitable basis. He was unwilling either to volunteer or to agree to anyone else doing so.

35. Mr. CAMARA said that he agreed with Mr. Pikis. Random selection would avoid any suspicion of subjectivity and would ensure that all members of the Committee had equal workloads.

36. Mrs. ILIOPOULOS-STRANGAS said that she agreed with Mr. Camara and Mr. Pikis. It was also important to ensure that the same Committee member was not always assigned to the reports of a particular country. Since the Committee's documents were available in translation, there was no need to distribute country reports on the basis of language. To allow Committee members to volunteer to serve as country rapporteurs was not conducive to objectivity. In the past, members who had not volunteered had been forced to serve as rapporteurs for the reports that no one else had wanted.

37. The CHAIRMAN said that the Committee had always assigned country reports on a volunteer basis in order to facilitate the work of the rapporteurs. He asked whether the Committee had in fact been accused of a lack of objectivity.

38. Mr. ZUPANCIC said he thought that the Committee should follow its past practice. Mr. González Poblete's introductions of country reports had provided an excellent example of the fact that country rapporteurs needed familiarity with the legal system of the country in question in order to read between the lines of reports.

39. Mr. YAKOVLEV said that the members of the Committee were experts who were supposedly equal with regard to the law, the Convention and States parties. It was also important for the Committee's workload to be equitably distributed. It was desirable, but not essential, to take account of individual members' areas of linguistic and legal expertise. He suggested that, after consultation with the secretariat, the Chairman should nominate country and alternate rapporteurs and submit the nominations to the Committee for its approval.

40. Mr. GONZÁLEZ POBLETE said that he had no intention of taking on all the reports for Spanish-speaking countries, but could agree to work primarily on Spanish-language reports. The annexes to reports, such as legislative texts, and the reports of smaller non-governmental organizations were, moreover, not necessarily submitted in one of the Committee's working languages - and yet those documents were often very useful. According to the Committee's rules of procedure, such organizations were not allowed to address the Committee, but they might some day be, as was the case in the Committee on Economic, Social and Cultural Rights.

41. Mr. PIKIS said that the Committee was composed of 10 experts who had been appointed precisely because of their expertise; there was one Convention to apply and all experts were equal. A system should be devised that would maximize the Committee's contribution and enable it to work as collectively as possible. He proposed a rotation system, which would be objective and consistent. Proceeding through the list of Committee members, A and B lists would be established for country rapporteurs and alternates, and, after every five countries considered, the list would be exhausted. If the "A" person was unable to serve, he or she would be replaced by the "B" name on the list and then take the next case slated for that person. He did not agree with Mr. Yakovlev about leaving the decision up to the Chairman.

42. Mr. CAMARA said that attention must be paid to the universal character of the Committee. Linguistic, cultural or regional criteria could not be favoured, as the Convention was an international instrument that went beyond language and culture. For the sake of objectivity, it would be a good idea to have country rapporteurs deal with regions other than their own.

43. Mr. SORENSEN said he agreed that the Committee was universal in character and that its work should be distributed equally, but recalled that it was also trying to make the reporting system more effective. Although the four working languages were equal, it was a big advantage if at least one of the rapporteurs knew the original language of the report and if both the country rapporteur and the alternate spoke the same language. He therefore hesitated to adopt the sort of automatic rotation system proposed by Mr. Pikis.

44. Mr. GONZÁLEZ POBLETE said that any rigid procedure adopted by the Committee might be counter-productive. He trusted in the Chairman to take decisions with assistance from the secretariat. Any automatic system would provide for more equitable distribution, but some countries were more difficult in any case. Criteria were needed, but they should not be rigid.

45. Mr. BURNS said that a system where the Chairman distributed the case load would be the most effective. He would be pleased if the Chairman assigned countries on the basis of equity, but using criteria of effectiveness. Reports in Spanish tended to be more difficult, with certain political nuances that he in particular would have trouble dealing with.

46. Mr. REGMI said that he agreed with Mr. Burns.

47. The CHAIRMAN suggested that the Bureau could manage the distribution of countries according to the various criteria that had been proposed.

48. Mr. PIKIS said that an automatic system was simple and easy. As long as personal disqualification was still possible, such a system was the best solution for ensuring impartial justice and equity.

49. Mr. SORENSEN said that he agreed with the Chairman. In the appointment of rapporteurs, the workload on article 19 and on article 22 should be taken into account because, in many ways, the latter involved more work than the former.

50. Mr. CAMARA said that, since all members of the Committee seemed to agree on the criteria, the Chairman and the secretariat could do the assignments.

51. Mr. ZUPANCIC said that the Chairman should distribute both the reports and the communications, requesting advice from the Bureau, as in any case his decisions were open to debate by the Committee.

52. Mr. YAKOVLEV said he agreed that the Chairman's proposals were open to debate.

53. The CHAIRMAN suggested that he should distribute reports and communications. If he heard no objection, he would take it that the Committee wished to suspend its decision on 1998 country rapporteurs until its next session.

54. It was so decided

FUTURE MEETINGS ON THE COMMITTEE (agenda item 7) (continued)

55. Mr. ZUPANCIC read out the following draft letter from the Chairman to the Secretary-General conveying the Committee's request for an extra week of work:

> "Having in mind both the tragic importance of the Convention against Torture and the persistence of the abhorrent practice of torture, the Committee against Torture urges the Secretary-General to request the General Assembly to authorize six working days to enable the Committee to function effectively.
>
> In its regular annual report to the General Assembly (Official Records, Fiftieth Session, Supplement No. 44 (A/50/44, paras. 208 and 209), the Committee already explained the need for an additional regular session of one week's duration due to the great complexity of its work, the intensive pace of its operations resulting from the increase in the number of States parties to the Convention, the new cycle of periodic reports submitted by States parties, the increasing volume of information received under the inquiry procedure and the growing number of communications submitted under the individual communications procedure.
>
> The Committee hereby reiterates this urgent request to your Excellency in view of these same reasons and wishes to add the following: keeping in mind the unfortunate budgetary constraints at the United Nations, the Committee proposes the simple extension of its present sessions for an additional six working days. This would not result in any additional travel expenditures for the expert members of the Committee. These additional six working days would, however, permit the Committee to deal with the rising backlog of cases. It would also enable the Committee to deal with some more reports of States parties at each session and to devote more time and attention to individual communications.
>
> On this occasion, the Committee also reconfirms its deep conviction concerning the critical importance of its mission, as well as its empirically supported belief that the functioning of the Committee so far has already proved to be decisive in the radical reduction of the abhorrent practice of torture, as well as in the enhancement of other goals expressed and implied in the Convention against Torture. While we appreciate that only limited resources are available in the budget of the United Nations, we feel that the work of the experts on the Committee could and should be met with the minimal additional expenditure described above.

In anticipation of your support for the cause of combating torture in the world, we should like to express our ..., etc."

56. Mrs. ILIOPOULOS-STRANGAS said that the letter should refer to the fact that the Committee was a small one consisting of 10 members, whereas the other Committees had 18 members. It should also mention the fact that the situation had worsened since the Committee's last report to the General Assembly. Was it not the Committee's intention to request five, rather than six, additional working days?

57. Mr. ZUPANCIC said that the request should be for five days.

58. Mr. PIKIS said that the choice of the word "tragic" in the first paragraph was unfortunate; it should be deleted. He also had reservations about the penultimate paragraph, as he disagreed with the statement that the functioning of the Committee had been decisive in the reduction or enhancement of the practice of torture. The Committee's work was being used, but the Committee should not blow its own trumpet. It was not seeking extra work because of the persistence of torture, but because of the workload imposed by the Convention and because it was trying to avoid a backlog.

59. Mr. SORENSEN said that the Committee should provide details on the backlog of work and the number of communications and periodic reports it had to deal with in order to substantiate its request for longer sessions. It should also refer to General Assembly resolution 51/87 in connection with the need for human rights treaty bodies to be given sufficient resources to overcome existing difficulties with their effective functioning. The members of the Committee should urge the representatives of their countries to support the request when it was submitted to the General Assembly.

60. Mr. YAKOVLEV said that the words "new cycle" in the second paragraph should be replaced by the words "significant rise in the number" to emphasize the fact that the budget allocated to the Committee when it had been set up was no longer commensurate with the number of States parties to the Convention or the larger volume of communications. The Committee should consider whether it would be appropriate to provide figures on how much the extra working days would cost.

61. Mr. CAMARA said it should be emphasized that the length of the Committee's sessions had been determined at a time when the workload had been significantly lighter and that the volume of work had grown to such an extent that a failure to extend the Committee's sessions could seriously impede its work.

62. Mrs. ILIOPOULOS-STRANGAS said that the Committee should make it clear that the extra days would not place a great financial burden on the United Nations.

63. Mr. BRUNI (Secretary of the Committee) said that the request for extra working days would have to go through the relevant administrative channels that decided how the regular budget was allocated. The Committee should focus on making it clear that it no longer had enough time to deal with the volume of work.

64. Mr. ZUPANCIC suggested that the letter should be redrafted by the secretariat to include the comments made by the members of the Committee.

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-FIRST SESSION (agenda item 8):

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS

65. Mr. BRUNI (Secretary of the Committee), drawing attention to General Assembly resolutions 51/86 and 51/87 and Commission on Human Rights resolutions 1997/38 and 1997/105, said that operative paragraph 5 of resolution 51/87 referred to an analytical study that would compare the provisions of a number of human rights conventions and was designed to identify duplication of reporting required under the instruments. He also noted that the report of the independent expert on enhancing the long-term effectiveness of the United Nations human rights treaty system had been finalized.

66. Mr. SORENSEN said that, in the fourth preambular paragraph of resolution 51/86, the General Assembly had for the first time acknowledged the existence of rehabilitation centres for victims of torture. It was also commendable that operative paragraph 20 of the resolution stressed the need for training to be provided to armed forces, police personnel and health-care workers in matters relating to human rights and the prevention of torture. In view of operative paragraph 8, the Committee should consider inviting the Special Rapporteur on the question of torture to a forthcoming session.

67. Commission on Human Rights resolution 1997/38 contained several new points, particularly in operative paragraphs 7 and 11. The Committee should discuss how it would proceed in respect of the proposed United Nations international day in support of victims of torture and the total eradication of torture, as referred to in operative paragraph 17.

The meeting rose at 6 p.m.

UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.291
27 June 1997

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Eighteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 291st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 May 1997, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of Sweden

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.291/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.97-16451 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Sweden (CAT/C/34/Add.4; HRI/CORE/1/Add.4)

1. At the invitation of the Chairman, Mr. Magnuson, Mrs. Fridström and Mrs. Jönsson (Sweden) took places at the Committee table.

2. The CHAIRMAN welcomed the Swedish delegation and invited it to introduce Sweden's third periodic report.

3. Mr. MAGNUSON (Sweden) said that since the drafting of the third periodic report in August 1996, certain important amendments relevant for the Committee had been introduced into Swedish legislation. One major topic of interest was the amendments to the Aliens Act which had come into force on 1 January 1997. According to the new provisions, the following categories of persons in need of protection should be granted residence permits in Sweden: refugees, as defined by the 1951 Convention relating to the Status of Refugees (a new feature of the Aliens Act was the fact that the definition of refugee included persons who risked persecution regardless of whether the agent of persecution was a State or whether the State failed to provide protection against persecution by other agents); persons who had a well-founded fear of being sentenced to death, corporal punishment, torture or other inhuman or degrading treatment or punishment; persons who needed protection from an external or internal armed conflict or who, on account of an environmental disaster, could not return to their country of origin; and persons who because of their sex or homosexuality had a well-founded fear of persecution. Aliens could also be granted residence permits for humanitarian reasons. The amendments to the Aliens Act also applied to certain aspects of legal procedure. There would be an increased use of personal interviews with applicants and no decision could be taken until the applicant had been heard.

4. Another change made it mandatory for the decision-making authorities to submit in writing the grounds for all their decisions on residence permits, positive or negative. Decisions on residence permits could henceforth be appealed even if they did not mean a refusal of entry or expulsion. Consequently, a rejection of an application for a residence permit prior to the applicant's arrival in Sweden could be appealed, which could be of importance in family-reunification cases. He also drew attention to a new provision stating that the Swedish authorities were bound to respect a stay-of-execution order requested by an international body which was entitled to examine complaints from individuals, unless there were extraordinary reasons for not doing so.

5. The provisions on the detention of aliens were also being revised and were scheduled to enter into force on 1 October 1997. In future, responsibility for aliens detained under the Aliens Act would be transferred from the police authorities to the Immigration Board. Aliens detained under the Act would as a rule be placed in special detention centres. However, the Immigration Board could in certain cases decide otherwise for safety reasons. There were limitations on the detention of aliens under the age of 18 (rather

than 16 as had previously been the case). The new provisions stressed that detainees' conditions should be more humane and that their dignity should be respected. They would be given the same medical care as asylum-seekers.

6. After informing the Committee of the main amendments to the Aliens Act, he said he wished to make a few comments and corrections with regard to the report. In connection with the policy of non-refoulement (Convention, art. 3, report, para. 4), as of 1 January 1997, chapter 8, section 1 of the Aliens Act stipulated that an alien refused entry or expelled could in no case be transferred to a country where there were "reasonable grounds" for believing that the alien would be in danger of being subjected to torture; the previous wording had used the expression "firm reason". As of 1 January 1997 the Aliens Act also contained an explicit provision to the effect that a person who had a well-founded fear of being sentenced to death or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment should be granted a residence permit. In the bill originally proposing the amended provision, the Government had stressed that evidentiary demands should not be made too high when a risk of torture existed.

7. With regard to article 8 of the Convention, paragraph 19 of the report should be disregarded, as it referred to a situation in which an alien could be expelled on account of a crime committed in Sweden. Concerning article 16, the provisions mentioned in paragraphs 24 and 25 of the report should be considered as applicable to aliens under the age of 18.

8. Mr. SORENSEN (Country Rapporteur) thanked the representative of Sweden for his oral introduction. Since Sweden's third periodic report was relatively short and essentially covered new developments, he would refer to all the reports submitted by the Swedish Government. He had headed the delegation of the European Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment when it had visited Sweden in 1991. As the Swedish authorities had published the report and all related documents, he felt free to refer to them. Speaking as Rapporteur for the Committee against Torture, he was pleased to be able to say that none of the information consulted gave any indication that torture existed in Sweden. On the other hand, many refugees living in Sweden had previously been tortured. For that reason the implementation of article 10 of the Convention, on education and information on the prohibition against torture, was extremely important. Sweden appeared to be fulfilling its obligations under the Convention in that respect. He noted, however, that the question of training of medical personnel was mentioned in the initial report and the second periodic report, but not in the third periodic report. Paragraph 15 of the second periodic report mentioned some centres and seminars of interest in that area, but said that there were no systematic training programmes. Yet all doctors, dentists or other medical personnel in Sweden would at one time or another be confronted with a former torture victim. Given the extensive and long-standing results of torture, all involved medical staff should receive training in accordance with article 10 of the Convention. The same was true for law-enforcement personnel. In addition, all police and immigration officers should learn to recognize and understand the behaviour of torture victims. He would like to know whether those categories of personnel received such training.

9. The third periodic report said nothing about the implementation of articles 11 to 15 of the Convention. It would be useful to have information on that subject, for example on how the Swedish Government implemented those articles in the three main areas: police, prisons and persons deprived of their liberty for health reasons. Where the police were concerned, article 11 required States to keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of arrested persons. As soon as people were taken into police custody, they should be able to enjoy four fundamental rights: to be informed of their rights, to be able to inform their family of their arrest, to be given the assistance of a lawyer and to see a doctor. Were those rights laid down in any Swedish law or regulation? Was there a possibility that they were not being respected? Who was responsible for the systematic monitoring of the police and places of detention? Was there a body in Sweden which could make unannounced visits to police stations or prisons to inspect the premises, consult the registers and meet freely with the detainees? If such a body did exist, did it issue a report and was that report made public?

10. Another area requiring special care was pre-trial detention. The very detention of persons presumed innocent could represent degrading and inhuman treatment, which was why it should be of limited duration. It would be useful to have details on pre-trial detention in Sweden, in particular its average length and the conditions for deciding whether a detainee should be placed in solitary confinement. A welcome development was the fact that, since 1 January 1994, the judge rather than the prosecution decided whether a person in pre-trial detention should be subject to restrictions (with regard to visits, correspondence, contact with other prisoners, etc.). Nevertheless, the courts still appeared too often to follow the prosecution's suggestions, with restrictions in one area or another imposed on a very high proportion of detained persons. There were three other categories of individuals for which custodial measures could be ordered. With regard to the mentally ill, the Committee would like to receive a copy of the report to be submitted to the Government at the end of 1997 by the independent commission appointed to evaluate the effects of the new legislation on individual rights: the Act concerning Psychiatric Compulsory Care and the Act concerning Forensic Psychiatric Care, which had entered into force on 1 January 1992 (report, para. 27). He wished to know under what conditions confinement in a psychiatric establishment could be ordered and the average length of time for which a patient could be held against his will. On another matter, paragraph 116 of the initial report (CAT/C/5/Add.1) stated that in 1985, HIV had been classed among the venereal diseases to which the Act concerning Protection against Communicable Diseases was applicable, and that since then, five persons had been committed to compulsory isolation under the Act. Were any HIV-positive people still being held in compulsory isolation and, if so, how long had they been held? Custodial measures could also be ordered against alcoholics and drug abusers. The Act concerning the Treatment of Misusers in Certain Cases, which had entered into force on 1 January 1989 (CAT/C/17/Add.9, para. 23) set forth conditions for compulsory treatment under the Act, one of which was that the misuser either seriously endangered his own physical or mental health or was running an obvious risk of ruining his life. Under what other conditions could a compulsory treatment measure be ordered in such cases?

11. Swedish legislation's provisions for reparation, compensation and rehabilitation gave full effect to article 14 of the Convention. He noted that the Swedish authorities, through the Swedish International Development Agency, were working effectively to rehabilitate torture victims abroad and that Sweden was one of the main contributors to the United Nations Voluntary Fund for Victims of Torture.

12. Mr. BURNS (Alternate Country Rapporteur) expressed satisfaction with Sweden's legislation on the prevention of torture and the administrative processes implementing them. He asked whether chapter 8, section 1 of the Aliens Act, as amended in January 1997, to which the representative of Sweden had referred in his oral introduction, also applied to terrorists. He commended the Act's new provisions extending the possibility of residence permits in Sweden to persons who because of their sex or homosexuality had a well-founded fear of persecution if they were sent back to their countries of origin.

13. Referring to article 3 of the Convention, he asked what was the average length of detention for asylum-seekers and whether there was any legal time-limit on detention.

14. Paragraph 9 of the report contained a list of provisions in the Penal Code criminalizing acts referred to in article 1 of the Convention, and paragraph 12 stated that the Swedish Government took the view that existing Swedish law was in accordance with the obligations under article 4 of the Convention. In the Committee's view, failure to incorporate the Convention's definition of torture into the legislation did not represent strict adherence. Did any of the acts listed in paragraph 9 of the report constitute torture? More exactly, were the assaults by policemen and prison guards (report, paras. 30 and 31) torture, and if not did they amount to cruel, inhuman or degrading treatment or punishment?

15. Referring to paragraph 100 of the initial report (CAT/C/5/Add.1), which described the reference during a hearing to a statement made during a preliminary investigation, he asked whether Swedish legislation was in conformity with the provisions of article 15 of the Convention on that matter.

16. Mrs. ILIOPOULOS-STRANGAS welcomed the Aliens Act, which could serve as model legislation for many countries. She would like to know what criteria were used to determine whether statements made by an alien to substantiate his fears of returning to his country of origin were reliable and reasonable.

17. Mr. REGMI thanked the Swedish delegation for its oral introduction, which had stressed Sweden's punctual submission of periodic reports. He regretted that the Swedish authorities had not yet incorporated into the national legislation a definition of torture consistent with that in article 1 of the Convention. He would also like additional information on the following two cases reported by Amnesty International: that of Tony Mutka, a prisoner who had died during transport by prisons administration employees, and that of Sergio Nigretti, who had allegedly been ill-treated while in solitary confinement in the Kumla Prison. He would like to know whether the information provided by Amnesty International was accurate and whether those responsible had been prosecuted and punished.

18. Mr. PIKIS said that Sweden's third periodic report was insufficient, for its purpose was to inform the Committee of changes in legislation during the period since the previous report, on the one hand, and to provide it with information on events and other facts relating to the implementation of each article of the Convention, on the other. Furthermore, reports by States parties should clearly indicate whether the State shared the concerns expressed by the Committee during consideration of the preceding report, whether the Committee's recommendations had been given effect, and if not, why not.

19. The Law Council mentioned in paragraph 19 of the core document (HRI/CORE/1/Add.4) gave opinions on draft bills. What was the Council's mandate? Did it examine the constitutionality of legislation and could it ensure that bills were in conformity with international law in general and the Convention against Torture in particular? Referring to paragraphs 31 to 33 of the core document, he asked whether an ordinary court was empowered to decide on the constitutionality of a fundamental law and whether it could repeal laws that were unconstitutional. Could the courts verify the conformity of a text with recognized human rights standards such as the Convention?

20. He had been surprised to read in paragraph 35 of the core document that an investigation carried out by the Parliamentary Ombudsman might result in disciplinary sanctions being imposed on a civil servant or a judge, and wondered whether that was compatible with the principle of the independence of the judiciary. Paragraphs 39 to 47 of the core document on remedies and compensation did not clearly indicate whether the State was directly responsible for violations of human rights by its representatives. In that context, it would be useful to know the maximum amount of compensation and who decided whether compensation should be granted, whether Sweden had separate legislation for compensating the victims of acts of violence, and, if so, its contents.

21. Paragraph 52 of document HRI/CORE/1/Add.4 stated that no Swedish citizen could be deported. If a Swedish national committed an act of torture abroad, was that person liable to prosecution in Sweden? The provisions of article 5, paragraph 2 of the Convention should apply in such cases.

22. Paragraphs 69 and 70 of the core document made him wonder whether international law was considered to be an integral part of Swedish internal law, or whether the rules of international customary law were perceived as being inseparable from the national law and applicable in the country.

23. Sweden's third periodic report (CAT/C/34/Add.4) indicated that the Swedish authorities saw no need to define torture as an offence in order to explicitly prohibit particularly reprehensible acts of repression. Whether taken separately or as a whole, the offences listed in the report in connection with article 4 of the Convention in no way constituted essential elements of the offence of torture as defined in the Convention. The penalties laid down for assault appeared slight in cases where such acts had been committed to obtain confessions. The penalties laid down for unlawful coercion, referred to in paragraph 16 (d) of the report, did come closer to the Convention's provisions, but the Convention did not merely refer to unlawful coercion for the purpose of obtaining confessions but also spoke of

coercion used as punishment and intimidation. In the light of the information in paragraph 30 of the report, it would be useful to know what penalties were provided by law for assaults on suspects or detainees by policemen. In such cases, conditional sentences and fines appeared to be very light punishment, and he was surprised to find the case in which a police inspector had assaulted a detained woman by dragging her by her hair qualified as "petty assault", when it was in fact degrading treatment. He also found the use of dogs mentioned in the report to be a matter of concern; Amnesty International had also criticized the use of dogs in connection with a case mentioned by Mr. Regmi. It would therefore be useful to know the contents of the regulations on the use of dogs: in what circumstances could dogs, which could be vicious, be let loose, by whom and under what conditions?

24. He would also like to know the different types of detention and prison systems in force in Sweden, whether solitary confinement existed and whether it was considered to be compatible with article 16 of the Convention, whether solitary confinement was ordered only for detainees awaiting trial and what its maximum duration was, what were the practical arrangements for solitary confinement, under what conditions it could be ordered, who was responsible for ordering it and whether the measure could be appealed. Finally, he endorsed Mr. Regmi's request for clarification of the cases reported by Amnesty International.

25. Mr. ZUPANČIČ said he would like to revert to a question raised by Mr. Burns and Mr. Pikis, namely the inclusion in Swedish legislation of a definition of the offence of torture. Article 4 of the Convention stipulated that all acts of torture must be qualified as torture under criminal law. The Swedish Government's position was that the offences listed in paragraph 9 of the report (CAT/C/34/Add.4) covered all the acts mentioned in article 4 of the Convention. However, the definition of torture in article 1 of the Convention was extremely technical from the criminal law standpoint and had been drafted with the greatest of care. It clearly stated that the acts in question must be committed by a public official or other person acting in an official capacity, whereas the acts listed in paragraph 9 of the report could be committed by anyone, rather than a certain category of persons. It was not merely a question of definition, for an obligation was involved to punish those responsible for such offences more severely because of their responsibilities. In addition, the offences covered in the Convention had to be committed with a specific intention: obtaining a confession, inflicting arbitrary punishment (for purposes of revenge), intimidation or coercion or for any reason based on discrimination. Paragraph 9 of the report made no mention of those specific intentions, which were an integral part of the definition.

26. The concept of attempt, mentioned in paragraph 11 of the report, was generally defined in Penal Codes, which most often stipulated that attempts should be punished when the act not completed itself carried a heavy sentence, such as a five-year prison term; that was not necessarily the case for the acts listed in paragraph 9 of the report, which was another reason why the Convention's definition of torture should be incorporated into the Swedish legal order. Furthermore, the rule according to which confessions extracted under torture should be excluded from the entire judicial procedure, and not only for those awaiting trial, had to be explicit. Roman law was much less

binding than Anglo-Saxon law in that respect, and certain items of evidence could be excluded from the procedure only if the judicial authority had recognized them as resulting from torture - which was not possible without a definition of torture.

27. Complicity - a very broad term - in acts of torture was punishable under article 4 of the Convention, and the information provided in paragraph 10 on the subject was not sufficient. There, too, it was necessary for Swedish law to include a full definition of torture. Article 2, paragraph 2 of the Convention stipulated that no circumstances could ever be invoked as a justification of torture. He did not doubt, however, that the Swedish Penal Code provided for cases in which all the acts listed in paragraph 9 of the report were justified. That was another reason why Swedish law should have a definition of torture. Finally, the Convention stipulated that States parties must ensure that any individual who alleged that he had been subjected to torture had the right to lodge a complaint and possibly obtain compensation, which could not be done without such a definition.

28. Mr. YAKOVLEV agreed that Sweden was one of the countries that implemented the Convention most effectively. Of particular interest was the important role played by the Ombudsman. He would, however, like to know more about the circumstances surrounding police arrests. There were, of course, times when force had to be used in making arrests, since some people were dangerous or aggressive. The problem was the dividing line between the lawful and unlawful use of force: were there guidelines for law enforcement officers on the subject, and what were their basic contents?

29. Mr. CAMARA associated himself with the very positive remarks made by the other members of the Committee about a country that was probably the one that implemented the Convention the most effectively, but he would like to ask a question with regard to paragraph 32 of the report, which spoke of the circumstances surrounding the death of a detainee who had apparently been mentally ill. The court had not found that the prison officers had caused the death of the prisoner, but that they had not followed the regulations concerning transport. It would be useful to know what criteria the court had used to come to that decision, and especially whether there had been a medical report attesting to the fact that failure to observe the transport regulations had not caused the death of the person in question. More generally, he would like to know whether culpable homicide (through negligence, carelessness or failure to observe regulations, for example) existed under Swedish criminal law. He would also like to return to the question of justification: if Swedish law did not contain a definition of the crime of torture and if it did not specify that no circumstance could be invoked as a justification of torture, how could Sweden say that it was in strict conformity with the Convention? If torture was covered under general criminal law, it could, like any other offence, be justified and those responsible cleared. It did appear necessary for the State party to enact special provisions for acts of torture if it wished to be in conformity with article 2, para graph 2 of the Convention.

30. The CHAIRMAN joined the other members of the Committee in commending Sweden. He associated himself with their remarks on the need to include in the legislation a definition of torture as a specific criminal offence, an

issue which had been of concern to the Committee since the consideration of Sweden's initial report. A further argument in favour of including a definition was the fact that without one Sweden would not be able to establish statistics on convictions for torture, should that prove necessary.

31. Mr. MAGNUSON (Sweden) said that he could already answer one of the questions asked by the members of the Committee: the amended legislation to which he had referred earlier had entered into force on 1 January 1997; another series of amendments to the detention system was under consideration and would enter into force in October 1997.

32. The CHAIRMAN invited the Swedish delegation to attend the following meeting to reply to the questions raised.

33. The Swedish delegation withdrew.

The public part of the meeting rose at 11.40 a.m.

UN

UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.292
9 May 1997

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Eighteenth session

SUMMARY RECORD OF THE 292nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 May 1997, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Paraguay (continued)

Third periodic report of Sweden

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.97-16431 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Paraguay (CAT/C/29/Add.1) (continued)

1. At the invitation of the Chairman, Ms. Casati (Paraguay) resumed her place at the Committee table.

2. Mr. GONZALEZ POBLETE (Country Rapporteur) read out the Committee's conclusions and recommendations on on the second periodic report of Paraguay:

"Conclusions and recommendations of the Committee against Torture

Paraguay

The Committee considered the second periodic report of Paraguay (CAT/C/29/Add.1) at its 289th, 290th and 292nd meetings, on 2 and 5 May 1997 (CAT/C/SR.289, 290 and 292), and adopted the following conclusions and recommendations:

A. Introduction

1. The Republic of Paraguay deposited its instrument of ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 12 March 1990. It has not made the declarations under articles 21 and 22 of the Convention. It is also a party to the Inter-American Convention to Prevent and Punish Torture.

2. On 13 January 1993, Paraguay submitted its initial report under article 19, which the Committee considered at its eleventh session in November 1993. Paraguay's second periodic report, which was submitted on 10 July 1996 and considered by the Committee at its eighteenth session, complies with the guidelines on the form and content of periodic reports which the Committee adopted in 1991.

B. Positive aspects

1. The Republic of Paraguay has not adopted any 'clean slate' or amnesty act.

2. Article 5 of the Paraguayan Constitution gives constitutional rank to the prohibition against torture and cruel, inhuman or degrading treatment or punishment and stipulates that there is no statutory limitation on judicial proceedings intended to punish it.

3. Under article 137 of the Constitution, international treaties, conventions and agreements, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture, once approved and ratified, form part of Paraguayan domestic law and rank higher than the laws and immediately below the Constitution.

4. The guarantees applicable to arrest and detention, which are set forth in article 12 of the Constitution, provide a legal framework which can and should help to prevent torture.

5. The constitutional provisions governing states of emergenc·· are consistent with the non-derogability provision contained in article 2, paragraph 2, of the Convention.

C. Factors and difficulties impeding the application of the Convention

1. Nearly five years after the promulgation of the Constitution of Paraguay, there has been no implementation of the decision to establish an Ombudsman, whose mandate, duties and functions offer an opportunity for effective action to promote and protect human rights and prevent torture and other cruel, inhuman and degrading treatment through systematic inspection of the places where they are reportedly practised. The Constitution also authorizes the Ombudsman to protect torture victims, investigate reports and complaints of torture and publicly condemn or report its occurrence.

2. There has been insufficient activity on the part of the Public Prosecutor's Department, as may be inferred from the report considered by the Committee, which states that, between 1991 and the date of completion of the report, criminal proceedings have been instituted in respect of physical ill-treatment by public officials in only 15 cases.

D. Subjects of concern

1. There is no definition of torture in existing legislation and the definition contained in the draft Penal Code at the current stage of its consideration by Parliament does not meet the obligation imposed on the State party by article 4 of the Convention in relation to article 1 thereof. The definition contained in the original form of the draft was inadequate and the current one is even more so.

2. The Committee has been informed by reliable sources that, although the infliction of torture and ill-treatment is no longer, as in the past, an official State policy, it is still practised by public officials, particularly in police stations and primary detention centres, in order to obtain confessions or information which are accepted by judges as grounds for instituting proceedings against the victims. The Committee is also concerned about information received from the same sources concerning the frequent physical ill-treatment of soldiers during their compulsory military service.

3. Another subject of concern to the Committee is information from the above-mentioned sources that paramilitary groups in the service of major landholders have been evicting people from land they have occupied for many years and that this activity appears to be tolerated by the State.

4. The existence of a legal arrest warrant does not, under any circumstances, justify torture. However, the fact that many arrests are made without a previously issued warrant from the competent authority and in cases other than those involving persons caught in flagrante delicto facilitates the practice of torture and cruel, inhuman or degrading treatment as a result of the clandestine circumstances in which it takes place and because the victims may remain at the disposal of their captors for longer than the 24-hour period within which detainees must, according to article 12, paragraph 5, of the Constitution, be brought before the competent judge.

5. With regard to the right of torture victims to redress and fair and adequate compensation, including the means for as full rehabilitation as possible, as provided for in article 14 of the Convention, the Committee is concerned that the report submitted by the State party makes no mention of the existence of programmes for the compensation and physical and mental rehabilitation of victims, thus leading it to believe that there are no such programmes. As to the right to fair and adequate compensation, the Committee is concerned that the State party has only subsidiary responsibility for the actions of its officials, as stated in article 106 of the Constitution, which makes victims responsible for laying claim to the assets of their torturers in order to exercise that right; the State may be required to assume responsibility only if such assets are non-existent, insufficient or cannot be found.

6. The Committee is also concerned that domestic law includes insufficient provisions prohibiting the expulsion, refoulement or extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, as stipulated in article 3 of the Convention. Article 43 of the Constitution extends such protection only to those granted political asylum.

7. Lastly, the Committee is concerned that domestic law contains no provisions on the universal prosecution of torture or on judicial cooperation for the same purpose.

E. Recommendations

1. That the provisions on torture should be separated from the new Penal Code, currently under somewhat lengthy consideration in Parliament, and that all matters related to torture and other cruel, inhuman or degrading treatment or punishment should be included in a special act containing the provisions necessary to give effect to the provisions of the Convention. In particular:

(a) Torture should be defined in terms consistent with article 1 of the Convention and, since Paraguay is also a party to the Inter-American Convention to Prevent and Punish Torture, the definition should include a specific statement that 'torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental

capacities, even if they do not cause physical pain or mental anguish', as established by article 2 of that Convention, which the Committee has taken into consideration in accordance with article 1, paragraph 2, of the United Nations Convention against Torture.

(b) The practice of torture should in itself be punishable by law, independently of any effects on or consequences for the victim and without prejudice to any increase in penalties in view of the seriousness of such effects or consequences.

(c) Provisions to facilitate the prosecution of torture at the international level should be included in accordance with the Convention and the provisions of article 143 of the Constitution, which includes recognition of international law and the international protection of human rights among the guiding principles of Paraguay's international relations.

2. The provisions establishing the post of Ombudsman should be implemented promptly, and the act regulating his functions and setting forth the principles embodied in chapter IV, section I, of the Constitution should be promulgated promptly.

3. Rules and instructions on the matters referred to in article 11 of the Convention should be issued and systematic procedures for the supervision and monitoring of compliance therewith should be established and maintained in order to eliminate the practice of torture and other cruel, inhuman or degrading treatment or punishment.

4. Physical conditions in prisons should be improved and the conditions of prisoners' detention should be made compatible with human dignity.

5. Systematic programmes of education and information regarding the prohibition against torture should be developed and fully included in the training of the officials referred to in article 10 of the Convention.

6. The declarations under articles 21 and 22 of the Convention should be made.

7. The Committee hopes that it will soon receive the official information on the enforcement of penalties against public officials who have engaged in the practice of torture and other cruel, inhuman and degrading treatment which the representatives of the State offered to provide during the Committee's consideration of the report of Paraguay.

8. Lastly, the Committee recommends that the third periodic report of Paraguay should be submitted by the 10 April 1999 deadline."

3. Ms. CASATI (Paraguay) said that, although torture had been practised for many years in Paraguay, the State was committed to eliminating it in all its forms. Considerable progress had been made, but the problem had not been totally solved. After 34 years of dictatorship, there was a need to change

the attitudes of all members of society. Her delegation would transmit the Committee's recommendations and conclusions to the competent authorities and hoped that they would lead to progress in the near future.

4. The CHAIRMAN thanked the delegation of Paraguay for its frank dialogue with the Committee.

5. The delegation of Paraguay withdrew.

The meeting was suspended at 3.25 p.m. and resumed at 3.30 p.m.

Third periodic report of Sweden (CAT/C/34/Add.4)

6. At the invitation of the Chairman, Mr. Magnusson (Sweden) took a place at the Committee table.

7. Mr. MAGNUSSON said that some of the questions asked by the members of the Committee had been answered in the two previous reports of Sweden; his Government had believed that the Committee wished to receive only a supplementary report.

8. Replying to the question on medical professionals and officials responsible for dealing with persons who might have been subjected to torture, he said that asylum-seekers and refugees were entitled to an individual medical interview on arrival in Sweden, at which time it could be determined whether they had been tortured. Furthermore, Parliament had set aside Skr 50 million for the rehabilitation of refugees and other victims of torture, including the development of training and research methodologies. The Chancery for Persons Subjected to Torture or Other Traumatic Experiences was a small government office whose task was to facilitate the rehabilitation of torture victims and persons who had been detained under difficult circumstances or had been subjected to massive violence.

9. Under the Swedish system, local Governments were responsible for providing health care and many of them had special units which could care for persons who had been subjected to traumatic experiences. There were Red Cross refugee centres for torture victims and special centres for torture and trauma victims in Stockholm and other cities. The National Institute for Psychosocial and Environmental Medicine dealt with torture victims and a number of institutions, including the Swedish Immigration Board, had allocated funds for special assistance to Bosnian torture victims. Regular training was provided to Immigration Board staff members and to doctors who dealt with torture victims.

10. With regard to the question concerning inspections of jails and remand centres, he said that the Parliamentary Ombudsman was responsible for inspecting such facilities and could examine any documents on request. The National Secrecy Act, which established legitimate exceptions to the principle that all official documents were available to the public, specifically stated that the right to privacy did not extend to documentation requested by the Ombudsman. The Ombudsman filed a report after each inspection of a remand centre or other public facility and was responsible for bringing any evidence of ill-treatment to the attention of the Ministry of Justice. The Ombudsman

could take action on his own initiative or in response to complaints. He could meet with individual prisoners or with the Council of Prisoners, which was elected by detainees to speak on their behalf; no prison authorities were present at such meetings. The National Prison and Probation Administration was also entitled to inspect the facilities under its supervision.

11. As to the question on the rights of detainees, he explained that anyone detained for longer than six hours must be informed of the offence he was suspected of having committed and the grounds for that suspicion. The authorities were not specifically required to inform the relatives of detainees of their arrest, but it was standard practice to do so unless there was reason to fear collusion. Parliament was considering a proposal that a specific requirement that detainees should be informed of the reason and grounds for their arrest should be added to the Police Act, currently under review.

12. In reply to the question on time limits for pre-trial detention, he said that the Code of Judicial Procedure stipulated that individuals could not be held in pre-trial detention any longer than was absolutely necessary. Charges must be filed within two weeks of arrest; if the prosecutor was unable to do so, he must go before the court to request an extension, and such requests must be repeated every two weeks. The prosecutor was required to show that he was carrying out the investigation as quickly as possible. The 1976 Act on Arrested and Remanded Persons emphasized that the treatment of arrested persons must be such as to counteract the harmful consequences of imprisonment and that, if possible, measures should be taken to provide detainees with personal support or any other assistance which they might need. Special consideration was given to the health conditions of detainees and any prisoner who needed or asked to see a doctor would be permitted to do so at the earliest opportunity.

13. It was the right of the Prosecutor to decide on any restrictions to be placed on a remanded person's contact with the outside world. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had criticized conditions in Swedish prisons, alleging that detainees were given insufficient opportunities for social contact and employment and that the physical environment was inadequate, particularly at the Kronoberg Remand Prison, the largest in Stockholm, which had subsequently been rebuilt in response to criticism by both the CPT and prisoners. The CPT's recommendations on the Prosecutor's right to impose restrictions on remanded persons had led the Ministry of Justice to undertake a study of whether current regulations allowed a reasonable balance to be struck between the need to protect individual integrity and the requirements of criminal justice. Where there was a risk of collusion, in accordance with the Code of Judicial Procedure, the court could, at the request of the Prosecutor, grant him permission to place restrictions on the prisoner's contact with the outside world, including the right to make telephone calls, receive visitors or read newspapers. In the Swedish trial system, which was similar to that of other Nordic countries, the principle of oral presentation and immediacy held sway and certain prerequisites had to be met in order to establish the facts in a hearing. It was reasonable to assume that, because of that same system, the number of people deprived of their liberty and subjected to even moderate restrictions would be more numerous than in countries with different systems.

14. A statutory amendment of 1 January 1994 left it up to the court, and not the Prosecutor, to decide whether prisoners should be subjected to restrictions. That amendment did not, however, mean that during remand proceedings, the court evaluated the restrictions proposed by the Prosecutor; on the contrary, the court routinely tended to grant the Prosecutor the right to impose restrictions. The Government was studying whether the right to appeal those restrictions should not also be introduced into the rules, but the final analysis of that study was not ready.

15. With regard to time limits for detention in remand prisons and the specific case of a person who had allegedly been detained in remand for 17 to 22 months, he would need to know specifically whether, for example, the case had involved drug smuggling or persons who had filed an appeal, which could prolong the procedure. In any event, the Court of Appeals had special rules on time limits for remand: for convicted persons, the matter must be taken up within eight weeks following the judgement in the Court of First Instance and, if the appeal concerned a decision to remand, it must be dealt with immediately and not later than four weeks after judgement.

16. As to the placement of persons in compulsory care in mental hospitals under the 1992 Act, the criterion of "for one's own good" was not used. There were three requirements for compulsory psychiatric care: the patient must suffer from a severe mental disorder; the patient must be in absolute need of such care because of his or her psychiatric condition and personal circumstances and because psychiatric care would not otherwise be available; and, whether he agreed or not, the patient must manifestly not be in a condition to make a decision on such matters. Decisions to place someone in compulsory care could be appealed before the administrative courts. As of December 1996, about 10 HIV-infected individuals had been detained under the Act concerning protection against communicable diseases. While persons had been detained under that Act for various periods of time, the maximum had been one year. The Act was also under review by a parliamentary commission.

17. The conditions for compulsory treatment under the 1989 Act on the Treatment of Misusers in Certain Cases, which related to the abuse of alcohol and other substances were that the person was seriously endangering his own physical or mental health and possibly endangering his own life or that of a close relative. Such treatment could not exceed six months. It might be asked whether the substance abuser should not decide such matters for himself, but Sweden believed that society had the responsibility to prevent individuals from ruining their own life. At the Committee's request, the translation of the new Aliens Act was underway and would be sent on completion.

18. No specific statistics were available on the average amount of time aliens spent in detention, but, as of December 1996, 67 of the 260 aliens detained, had been held for less than a day; 42, for 1 to 3 days; 55, for 4 to 9 days; and 96 for more than 10 days. As to alien children, a maximum detention of 72 hours applied, except in extraordinary circumstances in which the detention could be extended for another 72 hours. Detention of aliens could also be appealed to the administrative courts and, for those submitting an application under the Aliens Act, must be reviewed every two weeks. Aliens

awaiting expulsion could be held in custody for up to two months, after which the court must again review the case. It was sometimes difficult to obtain permission from countries to readmit their own citizens, contrary to international law.

19. With regard to the status of the Conventions in Swedish law, the principle of incorporation prevailed, and that meant that ratified conventions, including the Convention against Torture, did not automatically become a part of Swedish law. The traditional method was to enact equivalent provisions in new or existing Swedish statutes, but that was not necessary if Swedish law already contained similar provisions. In the case of the Convention against Torture, Parliament had taken the view that existing law was fully in keeping with Sweden's obligations thereunder and the Convention could therefore be ratified without any new legislation being enacted.

20. Constitutional protection existed against corporal punishment, torture and medical intervention for the purpose of influencing statements. Such protection was absolute; it could not be limited by law. That meant that public officials could not be empowered to resort to such measures and there was no justification for such acts. If the acts had been committed on the orders of another person and the perpetrator had been compelled to obey those orders, there was no criminal responsibility. In cases of acts of torture, however, the provision could never be invoked to exonerate the perpetrators. The Committee had seemed to be worried about inadequate punishment for torture, but chapter 29, article 2, of the Penal Code contained special provisions for meting out such punishment, taking account of aggravating circumstances. Such circumstances were particular cruelty on the part of the convicted person; the use by the convicted person of another's vulnerable position or of his own position as a public official; and if the purpose of the crime was to abuse an individual or group because of their race, skin colour, national or ethnic origins. That adequately reflected the relevant provisions of the Convention, of which Sweden had been one of the drafters.

21. Like other Scandinavian countries, Sweden did not have a constitutional court, but the Law Council, whose functions were laid down in chapter 8, article 18, of the Constitution, was a consultative body within the Supreme Court which must be consulted by the Government before it proposed legislation to Parliament. The Government was now preparing a document that would enable the Council to look at proposals for a new Police Act. The Council met daily and held hearings with Ministry officials on how a particular proposal related to the Constitution and other laws, the clarity of the drafting and whether the proposal contained the necessary safeguards for the rule of law. The European Convention on Human Rights had recently been made a part of Swedish law and contained a provision against torture which must be taken into account during adjudication. The courts could refuse to apply a law if the law was manifestly unconstitutional or contrary to another higher law.

22. Government and public authorities were legally responsible for loss or injury suffered by individuals as a result of their acts. Such loss or injury was regulated by the Act on Liability for Damages, which contained a specific rule that the authorities responsible for an act resulting in a person being hurt were liable to pay damages. It was the task of the Chancellor for Justice to monitor the application of that law.

23. Guidelines for law enforcement personnel were contained in the Police Act. Under article 8 of the Act, coercive measures could be applied only to the extent necessary to achieve results. All such measures must be based on the principle of proportionality. Officials must have the right to use force, but only if its use was appropriate to the circumstances. That applied to all public officials and not just police officers.

24. Solitary confinement could not be used as punishment in prisons, but there were situations involving violent individuals where it was needed to ensure prison security. In conformity with the Act on the treatment of prisoners, the duration of solitary confinement could not exceed the amount of time needed to calm down the violent behaviour. It would not be fair to leave other inmates at risk of ill-treatment; a balance must be struck between various interests.

25. There were no special rules on the use of dogs. In principle, they were regarded as a necessary means of assistance in police work and both the police and the dogs were specially trained. The principle of proportionality was again applicable: if a dog was used inappropriately, the responsible officer could be charged with abuse of authority.

26. With regard to the cases of Mr. Nigretti and another prisoner who had suffocated during transfer to hospital in July 1993, to which Amnesty International had referred, the latter case had been tried by the Court of First Instance and the Court of Appeals, resulting in an indictment for involuntary manslaughter and the imposition of a suspended sentence and fines. The case had attracted a great deal of public attention and led to new rules being introduced on the transfer of inmates. A medical investigation had been undertaken, but it could not be proved that those responsible for the transfer had actually caused the prisoner's death. Another case, that of Osmo Vallo, had also received much public attention. It had been brought before the court, which had fined the officer concerned for causing bodily injury, but there were doubts as to whether the case had been fully resolved and so it had been reopened. As to why the court had considered dragging a woman by her hair to be a petty crime, he had to assume that, since the court was independent, it had undertaken a careful analysis of the facts.

27. The question of the admissibility of confessions and the way in which they were introduced as evidence in trials was being considered in Parliament. Sweden did not rule out the use of confessions as evidence insofar as the courts were free to examine all the available information. However, a confession that had been made under duress was not admissible. Sweden was of the view that its existing legislation ensured full compliance with article 15 of the Convention.

28. Mr. SORENSEN (Country Rapporteur) said that he would like clarifications of reports of pre-trial detention for extended periods, including cases in which prisoners had been kept in solitary confinement for up to 20 months.

29. Mr. MAGNUSSON (Sweden) said that he was not aware of the circumstances surrounding the cases of people who had been kept in solitary confinement for up to 20 months. The rules governing solitary confinement were being reviewed, as was the question of appeals against such detention. Further details would be submitted in writing.

30. Mr. PIKIS asked who decided whether there was a risk of collusion that warranted keeping a person in solitary confinement and whether the detainee had access to the same information and evidence as the courts.

31. He also asked whether the courts had classified the incident in which a police inspector had dragged a woman by her hair as a "petty assault" and what sentence had been handed down against the officer.

32. Mr. MAGNUSSON (Sweden) said that the wording of paragraph 30 of the report, which mentioned the incident, gave the impression that the assault had been treated lightly, but that was not the case. The police inspector had been fined and convicted, and that decision had satisfied the victim.

33. The courts decided whether there was a risk of collusion. A detainee, and his legal counsel, had the right to see all the material and evidence that was available to the court and the prosecutor.

34. The CHAIRMAN thanked the delegation of Sweden for its replies.

The public part of the meeting rose at 4.45 p.m.